United States Court of Appeals

for the Second Circuit

APPENDIX

B

P/S

75-1268

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JACK L. CHESTNUT,

Defendant-Appellant.

APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Volume VII
Pages 698-823

THOMSON, WYLDE & NORDBY
Jack S. Nordby
Douglas W. Thomson
Suite 1530 - 55 East Fifth Street
Saint Paul, Minnesota 55101
(612) 227-0856
COCHRANE & BRESNAHAN
John A. Cochrane
Suite 500 - 360 Wabasha
Saint Paul, Minnesota 55102
(612) 298-1950
Counsel for Defendant-Appellant

UNITED STATES COURT OF APPEALS
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DEFENDANT'S REQUESTED INSTRUCTION
No. 1

The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" - with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defen-

dant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. So, if the jury views the evidence in the case as reasonably permitting either of two conclusions - one of innocence, the other of guilt - the jury should of course adopt the conclusion of innocence.

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* Devitt and Blackmar, §11.01

DEFENDANT'S REQUESTED INSTRUCTION
No. 2

An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence - such as the testimony of any eyewitness. The other is circumstantial evidence - the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Devitt and Blackmar, §11.02.

DEFENDANT'S REQUESTED INSTRUCTION
No. 3

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses". Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Devitt and Blackmar, §11.27.

DEFENDANT'S REQUESTED INSTRUCTION
No. 5

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness's testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Devitt and Blackmar, §11.33.

DEFENDANT'S REQUESTED INSTRUCTION
No. 6

If a party offers weaker and less satisfactory evidence when stronger and more satisfactory evidence could have been produced, you may view the evidence offered with suspicion.

(You must remember, however, that the defendant is not obliged to produce any evidence or to call any witnesses.)

Devitt and Blackmar, §11.34.

DEFENDANT'S REQUESTED INSTRUCTION
No. 7

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter

of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any as you may think it deserves.

Devitt and Blackmar, §12.01.

DEFENDANT'S REQUESTED INSTRUCTION
No. 8

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

Devitt and Blackmar, §12.04.

DEFENDANT'S REQUESTED INSTRUCTION
No. 9

The testimony of a witness may be discredited ro impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Devitt and Blackmar, §12.05.

DEFENDANT'S REQUESTED INSTRUCTION
No. 10

When an attempt is made to impeach a witness by showing a bad general reputation for truth and veracity in the community where the witness now resides, or has recently resided, the jury should consider this evidence along with all evidence of good reputation as to those traits of character. Evidence that the witness' reputation for truth and veracity has not been discussed or, that those traits of the witness' character have not been questioned, may be sufficient to warrant an inference of good reputation as to those traits of character.

Devitt and Blackmar, §12.08.

DEFENDANT'S REQUESTED INSTRUCTION
No. 11

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

Devitt and Blackmar, §12.16.

DEFENDANT'S REQUESTED INSTRUCTION
No. 12

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

(On the other hand, the government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond reasonable doubt of the existence of an essential element of the offense charged, if you believe beyond reasonable doubt that the witness is telling the truth.)

Devitt and Blackmar, §12.17.

DEFENDANT'S REQUESTED INSTRUCTION
No. 13

To constitute the crime charged in the indictment there must be the joint operation of two essential elements, an act forbidden by law and an intent to do the act.

Before a defendant may be found guilty of a crime the prosecution must establish beyond a reasonable doubt that under the statute described in these instructions defendant was forbidden to do the act charged in the indictment, and that he intentionally committed the act.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Devitt and Blackmar, §13.01.

DEFENDANT'S REQUESTED INSTRUCTION
No. 14

Evidence that an act was done at one time, or on one occasion, is not any evidence or proof whatever that a similar act was done at another time, or on another occasion. That is to say, evidence that a defendant may have committed an earlier act of a like nature may not be considered by the jury, in determining whether the accused committed any act charged in the indictment.

Nor may evidence of an alleged earlier act of a like nature be considered for any other purpose whatever, unless the jury first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt that the accused did the particular act charged in the particular count of the indictment then under deliberation.

If the jury should find beyond a reasonable doubt from other evidence in the case that the accused did the act charged in the particular count under deliberation, then the jury may consider evidence as to an alleged earlier act of a like nature, in determining the state of mind or intent with which the accused did the act charged in the particular count. And where proof of an alleged earlier act of a like nature is established by evidence which is clear and conclusive, the jury may, but is not obliged to,

draw the inference and find that, in doing the act charged in the particular count under deliberation, the accused acted willfully and with specific intent, and not because of mistake or accident or other innocent reason.

Devitt and Blackmar, §13.08.

DEFENDANT'S REQUESTED INSTRUCTION
No. 15

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

As stated before with respect to an offense such as charged in this case, specific intent must be proved beyond reasonable doubt before there can be a conviction.

Devitt and Blackmar, §16.07.
United States v. Byrd, 352 F.2d 570 (2nd Circuit 1965)
United States v. Peltz, 433 F.2d 48 (2nd Circuit 1970) cert. denied 401 U.S. 955.

DEFENDANT'S REQUESTED INSTRUCTION
No. 16

An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

Devitt and Blackmar, §16.13.

DEFENDANT'S REQUESTED INSTRUCTION
No. 17

The law permits the jury to find the accused guilty of any lesser offense which is necessarily included in the crime charged in the indictment, whenever such a course is consistent with the facts found by the jury from the evidence in the case, and with the law as given in the instructions of the Court.

So, if the jury should unanimously find the accused "Not Guilty" of the crime charged in the indictment then the jury must proceed to determine the guilt or innocence of the accused as to any lesser offense which is necessarily included in the crime charged.

The crime of WILLFULLY ACCEPTING AND RECEIVING AN UNLAWFUL CORPORATE CONTRIBUTION AND CAUSING ANOTHER TO ACCEPT AND RECEIVE AND UNLAWFUL CORPORATE CONTRIBUTION, which is charged in the indictment in this case, necessarily includes the lesser offense of INTENTIONALLY BUT NOT WILLFULLY ACCEPTING AND RECEIVING AND CAUSING ANOTHER TO ACCEPT AND RECEIVE AN UNLAWFUL CORPORATE CONTRIBUTION.

The jury will bear in mind that the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of any lesser offense which is necessarily in-

cluded in any crime charged in the indictment; the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Devitt and Blackmar, §17.11.

DEFENDANT'S REQUESTED INSTRUCTION
No. 18

It is proper to add the caution that nothing said in these instructions - nothing in any form of verdict prepared for your convenience - is to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

Devitt and Blackmar, §1716.

DEFENDANT'S REQUESTED INSTRUCTION
No. 19

The statute under which the defendant is charged is 18 U.S.C. §610 and insofar as it applies to this case it reads as follows:

> It is unlawful for . . . any corporation whatever . . . to make a contribution or expenditure in connection with any election at which . . . a senator or representative in . . . congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

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18 U.S.C. §610
18 U.S.C. §2

DEFENDANT'S REQUESTED INSTRUCTION
No. 20

The indictment has been read to you. The specific accusation it makes is that the defendant, Jack Chestnut, Willfully and knowingly accepted and received and caused Lennen & Newell, Inc. to accept and receive an unlawful corporate contribution from AMPI to the Humphrey Campaign between the dates of March 1, 1970 and June 25, 1970 in the Southern District of New York and elsewhere.

The essential elements of this offense, each of which the prosecution must prove beyond a reasonable doubt, are as follows:

1. That Associated Milk Producers, Inc., (AMPI) is a corporation organized under the laws of the State of Kansas.

2. That AMPI made an unlawful contribution (as opposed to an expenditure) to the Humphrey Campaign on or about the dates alleged.

3. That the defendant, Jack Chestnut, willfully accepted and received that contribution knowing that it had been made and that it was unlawful.

4. That the defendant willfully caused Lennen & Newell, Inc. to receive an unlawful contribution knowing that the con-

tribution was unlawful.

5. That the contribution was made in connection with an election at which a senator or representative in Congress was voted for or a primary election, political convention or caucus held to select candidates for said offices.

6. That the defendant, Jack Chesnut, accepted and received and caused Lennen & Newell, Inc. to accept and receive such an unlawful contribution acting in behalf of a campaign of the kind described in the statute.

7. That the defendant's unlawful acts, if you find they were unlawful, took place in The Southern District of New York.

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18 U.S.C. §610
18 U.S.C. §2

DEFENDANT'S REQUESTED INSTRUCTION
No. 21

In order to cause another person to commit a criminal act, it is necessary that the accused willfully do, or willfully fail to do, something which, in the ordinary performance of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.

An act or a failure to act is "willfully" done, if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

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§11.09, Devitt and Blackmar, Federal Jury Practice and Instructions, (Second Edition)
Wapnick v. United States, 355 F.2d 136 (2nd Circuit 1966).

DEFENDANT'S REQUESTED INSTRUCTION
No. 22

You are instructed that you must find the defendant not guilty unless the government has proved beyond a reasonable doubt that the payment made by AMPI to Lonnen & Newell was a "contribution" as opposed to an "expenditure". The statute which defines these terms, 18 U..C. §591, reads as follows:

> The term "contribution" includes a gift, subscription, loan, a-vance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;
>
> The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;

You are further instructed that "contribution' is a direct gift or a direct payment to a candidate by a corporation, whereas an "expenditure" is an indirect payment, that is a payment made not to the candidate or his committee but to a third party which accrues to the benefit of the candidate. Therefore, if you find that the payment by AMPI was not made directly to the defendant or the Humphrey campaign but accrued indirectly to their benefit you must find the defendant not guilty.

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18 U.S.C. 591
United States v. C.I.O., 335 U.S. 106 (1948)
United States v. Auto Workers, 352 U.S. 567 (1957)
United States v. Lewis Food Company, 366 F.2d 710 (9th Cir.1966)

DEFENDANT'S REQUESTED INSTRUCTION
No. 23

The law makes it illegal for a corporation to make contributions to political candidates, but the law also provides that contributions to political candidates are lawful and may be made by independent organizations established by corporations to distribute to political candidates' funds which are voluntarily paid into them by members of the corporation.

There has been evidence in this trial that The Trust for Agricultural Political Education (TAPE) and the Committee for Thorough Agricultural Political Education (C-TAPE) of which Mr. Lilly was the secretary, were a Trust and Committee established and authorized to make such legal and lawful political contributions on behalf of the members of AMPI.

Therefore, you are instructed that you must find the defendant not guilty unless you are satisfied beyond a reasonable doubt that he knew that the payments to Lennen & Newell would be and were in fact made from corporate funds of AMPI and not from the funds of TAPE or C-TAPE and that he willfully accepted and received and caused Lennen & Newell to accept and receive payments he knew would be and were made by the corporation rather than by the committee.

DEFENDANT'S REQUESTED INSTRUCTION
No. 24

You are further instructed that the venue, that is the location of the conduct attributed to the defendant, is an essential element of this alleged offense and must be proved beyond a reasonable doubt. Therefore you may not return a verdict of guilty unless you are satisfied beyond a reasonable doubt that Mr. Chestnut accepted or received and caused Lennen & Newell to receive the payments in question in the Southern District of New York and not at some other place. If you find that the payments in question were finally accepted and received by Lennen & Newell in some place other than the District of New Yor,, or if you find that acts on the part of Mr. Chestnut which caused Lennen & Newell to receive these checks took place somewhere other than in the Southern District of New York you must find Mr. Chestnut not guilty. You are further instructed that it is not sufficient for this purpose merely to prove that the payments in question were delivered by mail or other means into the Southern District of New York if the actual receiving and acceptance of them by Lennen & Newell or by the defendant took place previous to that time in some other place.

The Southern District of New York consists of the Island and Borough of Manhattan only.

DEFENDANT'S REQUESTED INSTRUCTION
No. 25

Defendant is accused of causing Lennen & Newell to receive an illegal contribution. In this regard it is not necessary for the Government to prove that it was unlawful for Lennen & Newell to receive the contribution, but it is essential that the Government prove that it was unlawful for Mr. Chestnut to cause Lennen & Newell to receive the contribution and that Mr. Chestnut knew it was unlawful for him to do so, and that knowing it was unlawful he willfully and deliberately caused them to receive it.

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18 U.S.C. §2

There has been testimony regarding the legality of contributions by Mr. Lilly other than the payments which are charged in the indictment. 18 U.S.C. § 608 provides in part as follows:

"Limitations on political contributions and purchases

(a) Whoever, directly or indirectly, makes contributions in an aggregate amount in excess of $5,000 during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office, including the offices of President of the United States and Presidential and Vice Presidential electors, or to or on behalf of any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

This subsection shall not apply to contributions made to or by a State or local committee or other State or local organization or to similar committees or organizations in the District of Columbia or in any Territory or Possession of the United States."

Thus you are instructed that there was no legal limit of $5,000 upon contribution made to a state or local committee or other state or local organization, and any contribution by Mr. Lilly to such a state or local organization was not illegal.

DEFENDANT'S REQUESTED INSTRUCTION NO. 27

There has been evidence that Mr. Lilly and others were unlawfully reimbursed from corporate funds for contributions made on personal accounts. There is, however, no evidence that the defendant, Mr. Chestnut was in any way involved in or even aware of this system of reimbursement within A.M.P.I. and you may not draw any inference against Mr. Chestnut from that nor attribute knowledge of it to him.

EFB:bj
n-170

REQUEST NO. 1

Jury's Provice to Determine Facts

We now come to that part of the case where the evidence is in, the lawyers have presented their arguments, and you are about to decide the fact issues that are in the case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case. I shall later refer to how you determine credibility of witnesses.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions, and to apply it to the facts as you find them. The logical result of that application is the verdict in the case.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the Government or the defense may have said with respect to matters in evidence during the trial in question, in colloquy with the Court, in

Jury's Province to Determine Facts

argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the Court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection.

As I have instructed you so often during this trial, the case must be decided by you upon the sworn testimony of the witnesses, any stipulations entered into among counsel and such exhibits as were received in evidence.

From the charge of Judge Weinfeld in:

United States v. Kahaner, aff'd, 317 F.2d 459 (2d Cir. 1963), cert. denied, 375 U.S. 836 (1963), at pp. 763a-64a, Appellant Keogh's Appendix. (All subsequent page references in Kahaner are to Appellant Keogh's Appendix.)

EFB:bj
n-170

REQUEST NO. 2

The Indictment; Burden of Proof and Reasonable Doubt

The indictment upon which the defendant is brought to trial is merely an accusation, a charge. It is no evidence or proof of a defendant's guilt.

The government has the burden of proof, to prove the charges against the defendants beyond a reasonable doubt. It is a burden that never shifts and it remains with the government throughout the trial. A defendant doesn't have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. The presumption of innocence disappears only if and when you are satisfied that the government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

In weighing the evidence to determine whether the proof has been beyond a reasonable doubt, you will consider the quality and the substance of the evidence and not the quantity or the number of witnesses.

You have heard from me and you have heard from counsel the expression "reasonable doubt." A "reasonable doubt" is one founded on reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which is substantial and not merely shadowy.

The Indictment; Burden of Proof and Reasonable Doubt

A reasonable doubt is one which appeals to your reason, your common sense, your experience, your judgment. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

A reasonable doubt is not a vague, speculative, imaginary doubt, but such a doubt as would cause prudent people to hesitate before acting in matters of importance to themselves.

If you are confronted with an important decision and after reviewing all the factors that are pertinent, you are beset with uncertainty, with doubt, and unsure of your judgment, then you have a reasonable doubt, and, conversely, taking into account all the elements that pertain to the problem, if you have no reserve about your judgment, then you have no reasonable doubt.

Now, members of the jury, proof beyond a reasonable doubt doesn't mean proof to a positive certainty nor does it mean proof beyond all possible doubt. If that were the rule, few men or women, however guilty, would ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which is not capable of being proved with mathematical certainty. In accordance, the law in a

The Indictment; Burden of Proof and Reasonable Doubt

criminal case is that it is sufficient that the guilt of a defendant be established beyond a reasonable doubt and not beyond all possible doubt.

From Judge Wyatt's charge in United States v. Zane, (Trial Tr. pp. 4067 ff.), aff'd. 495 F.2d 683 (2d Cir. 1974).

EFB:bj
n-170

REQUEST NO. 3

The Government respectfully requests that the Court read the Indictment.

MFB:bj
n-170

REQUEST NO. 4

The Statutes

The charge set forth in the indictment involves the interplay of three statutes which I shall now read to you.

Section 610 of Title 18, United States Code, provides, in pertinent part, as follows:

> "It is unlawful for ... any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election ... held to select candidates for any political office ... or for any corporations ... to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or a Representative in, are to be voted for, ... or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Section 591 of Title 18, United States Code defines contribution to include: "a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;"

Finally, Section 2 of Title 18, United States Code, provides, in pertinent part, as follows:

The Statutes

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

(b) Whoever wilfully causes an act to be done if directly performed by him or another would be an offense against the United States is punishable as a principal."

EFB:bj
n-170

REQUEST NO. 3

Elements of Offense

In order to find the defendant guilty, you must find that the government has established beyond a reasonable doubt all of the following elements.

1) First, you must find that the Associated Milk Producers, Inc. was a corporation organized under the laws of the state of Kansas.

2) Second, you must find that the Associated Milk Producers, Inc. made a "contribution" on behalf of a political campaign. As I mentioned previously, the terms "contributions" includes "a gift, subscription, loan, advance, or deposit, of money or anything of value."

3) Third, you must find that the defendant Chestnut accepted and received, or caused to be accepted and received a campaign contribution from AMPI on behalf of the Humphrey campaign.

4) Fourth you must find that this transaction occurred in conjunction with an election or primary election in which a Senator was to be voted for.

5) Fifth, you must find that the act with which the defendant is charged was intentionally and wilfully done.

I will now review each of these elements in greater detail.

LFB:rms
74-1191
n-170

REQUEST NO. 6

The first element which must be proved beyond a reasonable doubt is that the Associated Milk Producers, Incorporated was a corporation organized under the laws of the State of Kansas. Although there appears to be no dispute as to the existence of that element, you must nevertheless be satisfied that the Government has proved beyond a reasonable doubt that the Associated Milk Producers, Incorporated was in fact, a corporation.

LFB:rms
74-1191
n-170

REQUEST NO. 7

The second element which must be proved beyond a reasonable doubt is that the Associated Milk Producers, Inc. made a "contribution" on behalf of a political campaign. As I mentioned previously, the term "contribution" includes a gift, subscription, loan, advance, or deposit of money, or anything of value.

The government here charges that the defendant Chestnut caused Lennen and Newell, Inc., an advertising firm providing services to the Humphrey campaign, to accept a gift of money on behalf of the Humphrey campaign. More specifically, the gift charged here is that AMPI paid Lennen & Newell, Inc. for services that Lennen & Newell performed for the Humphrey campaign. In effect, the government charges that AMPI picked up the bill that the Humphrey campaign ran up at Lennen and Newell. Paying another's bill is clearly a gift of money, or, in short, a contribution to the Humphrey campaign. Thus, if you should find, beyond a reasonable doubt, that the defendant Chestnut did, in fact accept, or cause Lennen and Newell to accept a payment from Associated Milk Producers, Inc. for services that Lennen and Newell rendered to the Humphrey campaign, I charge you that that payment is a gift of money, and thus, this element would have been proven beyond a reasonable doubt.

PB:rms
4-1191
-170

REQUEST NO. 6

The third element which you must find beyond a reasonable doubt is that the defendant Chestnut accepted and received, or caused to be accepted and received a campaign contribution on behalf of the Humphrey campaign. In conjunction with this element we must consider the definition of the words "accept" and "receive."

To "receive" is to take into possession and control. (Blacks Law Dictionary, 4th ed, West Publishing Co., 1951 at 1443).

To "accept" is to receive with approval or satisfaction, to receive with intent to retain (Blacks Law Dictionary, supra at 26).

It must be remebered that this indictment charges the defendant with accepting and receiving or causing Lennen and Newell to accept and receive a corporate campaign contribution. With respect to that part of the Indictment which charges the defendant with having caused the illegal transaction, the government also relies on Section 2 of Title 18 of the United States Code, which reads as follows:

"(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

This means that not only is the person who commits an illegal act, the person usually called a principal, guilty, but anyone who causes the commission of the act is likewise guilty of committing that illegal act.

In order to find that a defendant caused another to commit the offenses charged in this count, you must find that the defendant in some way associated himself with the criminal venture of accepting and receiving a corporate campaign contribution; that he participated in it as something which he wished to bring about; and that he by his act or acts endeavored to make it succeed.

Participation by a defendant in a criminal venture may be shown by any act designed to promote or further the criminal venture, even of relatively slight importance, which you find was committed by the defendant. But to find a defendant guilty of causing a criminal act you must find something more than mere knowledge on his part that the crime was being committed, since a mere spectator at a crime is not a participant.

EFB:rms
74-1191
n-170

REQUEST NO. 5 (cont'd) -3-

In determining whether a defendant participated in a criminal venture, you may consider whether that defendant had any stake in the venture or motive to aid the venture.

See generally United States v. Umans, 368 F.2d 725 (2d Cir. 1966).

EFB:rms
74-1191
n-170

REQUEST NO. 9

The fourth element of the crime charged is that said transaction occurred in conjunction with an election or primary election in which a Senator was to be voted for.

FB:rms
74-1191
n-170

REQUEST NO. 10

Proof of Knowledge, Intention and Wilfulness

The fifth element which you must find is that the act with which the defendant is charged was knowingly, intentionally and wilfully done.

Knowledge and intent exist in the mind. Since it is not possible to look into a person's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

United States v. Platt, 182 F.2d 469, 471 (2d Cir. 1950);

Paschen v. United States, 70 F.2d 491 498 (7th Cir. 1934);

United States v. Kelley, 186 F.2d 598 (7th Cir.), cert. denied, 341 U.S. 954 (1951).

LFB:rms
74-1191
n-170

REQUEST NO. 10 (cont'd) -2-

Proof of Knowledge, Intention and Wilfulness

Wilful means that one does an act purposely, and with the specific intent to disregard the law, or to do that which the law forbids. The element of wilfulness, ladies and gentlemen concerns the state of a person's mind. Unfortunately, medical science has not devised an instrument which can record what was in one's mind in the past, or what then motivated him. The state of a person's mind can only be inferred from his words, his actions, and his conduct.

So direct proof of wilful intent, or of wilfulness, is not required by law. Rarely is direct evidence obtainable, for as a general rule a person doesn't proclaim or publically announce, or sign a statement, that his actions were motivated by evil or criminal intent. Indeed, it would be a rare case where it could be shown that a defendant had stated that he was doing certain things with the intent of violating the law.

Circumstantial evidence under our law is as weighty as direct evidence.

Circumstantial evidence is proof offered of objective facts and circumstances from which one, in terms of common sense, can rationally and logically infer the ultimate fact sought to be established. Circumstantial evidence, if believed, is of no less value in the eyes of the law than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of a defendant.

EFB:rms
74-1191
n-170

REQUEST NO. 10 (cont'd)

Proof of Knowledge, Intention and Wilfulness

The Government contends that the evidence in this case points to the conclusion that the defendant acted wilfully with the intention of receiving a contribution from AMPI on behalf of the Humphrey campaign; and that he did not act carelessly or inadvertently.

Any conduct the likely effect of which would be to mislead or conceal is conduct from which a wilful attempt to evade may be inferred. Thus, wilful intent may be inferred from conduct such as destroying documentary evidence that would constitute proof of the commission of a crime.

Adapted from the charge of Judge Cooper in United States v. Charles Marcus, supra, at pp. 1602-07; from the charge of Judge Palmieri in United States v. Woodner, C 1530225, C 156-333 at pp. 3344-47 of the stenographic transcript, aff'd., 317 F.2d 649 (2d Cir.), cert. denied, 375 U.S. 903 (1903). See also Spies v. United States, 317 U.S. 492, 499 (1943), and the charge of Judge MacMahon in United States v. Bernstein and Harr, 68 Cr. 333, pp. 814-18 of the trial transcript, aff'd., 417 F.2d 614 (2d Cir. 1969).

FB:rms
4-1191
-170

REQUEST NO. 11

Conscious Avoidance of Guilt

The fifth element of the offense is that the defendant knew that the contributions from the Associated Milk Producers, Inc. were illegal. Knowledge is not something that you can see with the eye or touch with the finger. It is seldom possible to prove it by direct evidence. The government relies both on direct and circumstantial evidence in this case to establish knowledge.

In deciding whether the defendant knew the contrib tions were illegal, you should consider all the circumstances, such as how the defendant handled the transaction, how he conducted himself. Do his actions betray guilty knowledge or are his actions those of a duped, innocent man?

Guilty knowledge cannot be established merely by demonstrating negligence or even foolishness on the part of a defendant. However it is not necessary that the Government prove to a certainty that the defendant knew the contributions were illegal. Knowledge that a transaction is illegal may be inferred from circumstances that would convince a man of ordinary intelligence that this is the fact. The element of knowledge may be satisfied by proof that the defendant deliberately closed his eyes to what otherwise would have been obvious to him.

REQUEST NO. 11 (cont'd)

Conscious Avoidance of Guilt

Thus, if you find that the defendant acted with reckless disregard of whether the transactions were illegal and with a conscious purpose to avoid learning the truth the requirement of knowledge would be satisfied unless the defendant actually believed the transactions were legal.

You should scrutinize the entire conduct of the defendant at or near the time the offenses are alleged to have been committed.

Adapted from the charge of the Court in United States v. Thaler, et al., as approved by the Court of Appeals in United States v. Jacobs, 475 F.2d 270, 287 (2d Cir. 1973).

CFB:rmc
74-1191
n-170

REQUEST NO. 12

False Exculpatory Statements

There has been testimony that the defendant made a number of statements tending to show his innocence. There has also been testimony that these statements were false.

I charge you that exculpatory statements, when shown to be false, are circumstantial evidence of guilty consciousness and have independent probative force.

United States v. Smolin, 182 F.2d 782, 786 (2d Cir. 1950); United States v. DeAlesandro, 361 F.2d 694, 697-8 (2d Cir.), cert. denied, 385 U.S. 842 (1966); United States v. Tropiano 418 F.2d 1069, 1081 (2d Cir. 1969).

EFB:sr
n-170

REQUEST NO. 13

Spoliation of Evidence

There has been testimony that the defendant admitted, at the time of the formation of the Senate Watergate Committee, that he had already destroyed certain documents which the Watergate Committee might subpoena.

I charge you that conduct on the part of a defendant to suppress evidence in any form, like the destruction of documents, if established to your satisfaction beyond a reasonable doubt, is competent evidence from which you may infer consciousness of guilt.

United States v. Remington, 191 F.2d 246, 251 (2d Cir. 1951), cert. denied 347 U.S. 913 (1953). See also United States v. Alberti, 470 F.2d 878 (2d Cir. 1970); United States v. Cirillo, 468 F.2d 1233, 1240 (2d Cir. 1970); Rich v. United States, 384 F.2d 887, 888 (5th Cir. 1967): See generally Wigmore, Vol. II, 3d Edition, §§ 278, 291 (Spoilation of Evidence).

EFB:sr
n-170

REQUEST NO. 14

Similar Acts - Intent

You may consider, in determining whether the defendant acted with guilty knowledge or intent, the fact, if you find it true, that the defendant engaged in other transactions similar to those charged in the indictment.

United States v. Mazzochi,
Docket No. 34284 (April 7, 1970)

United States v. Deaton,
381 F.2d 114 (2d Cir. 1967)

United States v. Leitner,
312 F.2d 107, 108 (2d Cir. 1963)

United States v. Shurtleff,
43 F.2d 944 (2d Cir. 1930)

EFB:sr
n-170

REQUEST NO. 15

The Testimony of the
Handwriting Expert.

"The general rule is that witnesses are permitted to testify only as to facts and may not express their opinions. The exception to this rule is the opinion of a qualified expert on some particular technical matters. The expert may testify as to his opinion on a subject concerning which he has special knowledge. This is allowed on the theory that the advice of one experienced and versed in technical or special subjects will aid the Jury.

"You may consider the expert's qualifications and opinion; weigh his reasons, if any, and give his testimony such weight as you feel it deserves. As previously stated, expert opinion is purely advisory and you may reject it entirely if in your judgment the reasons given for it are not convincing or sound. The determination rests with you - not with the experts."

(From Charge of Honorable Henry W. Goddard, U.S. District Judge, in the case of United States v. Alger Hiss, Jan. 20, 1950; see also Label v. American Airlines, 205 F.2d 927 (2nd Cir. 1953); Mc Cormick, Evidence, §§ 11-13.

EFB:sr
n-170

REQUEST NO. 16

Direct and Circumstantial Evidence

Now, the law recognizes two types of evidence: direct evidence and circumstantial evidence. Direct evidence is where a person testifies from what he saw or heard, what he knows of his own knowledge. If believed, such testimony proves the truth of the matter without requiring any inference.

Circumstantial evidence is where proof is given of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind.

We sometimes use an example from the old story of Robinson Crusoe.

You remember that Crusoe one day saw footprints on the sand of the beach. He didn't see any man. But from the circumstantial evidence, the footprints, he drew the logical inference that a man had walked on the beach.

Circumstantial evidence if believed is of no less value than direct evidence.

(Adapted from the charge of Judge Wyatt in United States v. Zane (Trial Tr. pp. 4115-16), aff'd 495 F.2d 683 (2d Cir. 1974).

EFB:sr
n-170

REQUEST NO. 16 (Cont'd) -2-

Direct and Circumstantial Evidence

As already indicated, you are likely to rely on circumstantial evidence in ascertaining a person's intent. Proof of some individual circumstances in your view may not, of itself, show, with any degree of force the intent of a person. However, the sum of circumstances may, in your judgment, be greater than any of them alone. It is for you to weigh all of the circumstances and to decide the matter from all of the evidence.

Adapted from Opinion of Learned Hand, United States v. White, 124 F.2d 181 (2d Cir. 1941).

EFD:sr
n-170

REQUEST NO. 17

Inferences

From time to time during this trial you have heard the word "inference" used. You have been asked to draw inferences from pieces of evidence before you and from the testimony of witnesses. The term "inference" simply describes a process of reasoning that is familiar to all of us. When we start with one fact or a set of facts already proved and deduce from those a logical conclusion, we draw an inference. You have to draw inferences daily in your own lives.

The decision as to whether to draw or to reject a requested inference -- and there were inferences requested by counsel for both sides in their summations -- requests entirely in your sound judgment.

You are permitted to arrive at your findings as to disputed questions of fact by way of inferences as well as by direct proof. However, an inference must not be just a mere supposition or a rambling choice between a couple of far-out possibilities. It must be a well-considered conclusion warranted by reason and common sense.

From Judge Mansfield's charge in United States v. Simon, (Trial Tr. pp. 4074-75), aff'd 425 F.2d 796 (2d Cir. 1969).

EFB:sr
n-170

REQUEST NO. 18

Testimony of a Defendant (Requested if a Defendant Testifies)

The law permits but doesn't require a defendant to testify in his own behalf. The defendant has taken the stand and testified. Naturally, a defendant has a deep personal interest in the result of his prosecution. In fact, it seems clear that he has the greatest interest of all. Interest creates a motive for false testimony. The greater the interest, the greater the motive, and the interest of a defendant in the result of his trial is of a character possessed by no other witness. In appraising his credibility, you may take the fact of interest into consideration. However, it by no means follows that simply because a person has a vital interest in the result that he is not capable of giving a straight-forward or truthful account of events. It is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

From Judge Wyatt's charge in United States v. Zane, (Trial Tr. pp. 4125-26), aff'd 495 F.2d 683 (2d Cir. 1974).

EFo:sr
n-170

REQUEST NO. 19

Persons Not On Trial

You are not to be concerned that other persons who may appear to be involved in the crimes charged against this defendant have not been indicted.

This must not enter into your deliberations except insofar as it may properly be considered by you in evaluating the credibility of such witnesses.

The determination of whether charges shall be brought against alleged wrong doers is a matter to be decided by the United States Attorney and a grand jury. And the fact that prosecutions have not been instituted against other persons who may or may not be involved permits no inference against the government and must play no part in your deliberations.

Guilt is personal. The guilt or innocence of Jack Chestnut on the charge against him must be determined solely upon the evidence presented against him, or the lack of evidence.

The case against him stands or falls upon the proof against him and not against someone else.

United States v. Fisher, 74 Cr. 388 (S.D.N.Y., September 16, 1974) (Weinfeld, D.J.), trial transcript at 848-49.

EFB:sr
n-170

REQUEST NO. 20

Credibility and Impeachment of Witnesses

Now how do you determine the truth, and how do you appraise the credibility of the witnesses? Well, you use your own plain, every day common sense.

You have seen the wintesses, you have observed the manner of their testifying, and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome. In other words, you again apply your common sense and your every day experience. You may, of course, take into consideration the interest of a witness. An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider in determining the weight and credibility to be given to his testimony.

If any witness has wilfully testified falsely to any material fact, you may disregard all his or her testimony or accept such part of it as you believe worthy of belief or as it appeals to your reason or judgment.

EFD:ef
n-170

REQUEST NO. 20 (Cont'd) -2-

Credibility and Impeachment of Witnesses

A witness may be discredited or impeached by contradictory evidence, or by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

Adapted from the charge of the Honorable Richard H. Levet in United States v. Tufaro, Appellant's Appendix pp. 37a-38a, Aff'd. per curiam, 316 F.2d 240 (2d Cir.), cert. denied, 375 U.S. 832 (1963).

EFS:tb
2-170

REQUEST NO. 21

Sympathy; Oath as Jurors

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in the case and the crucial hard core question that you must ask yourselves as you sift through this evidence is, Where do you find the truth? This is a quest for the truth, that's what a trial is. It's not a battle of wits. It is not a contest of salesmanship and it is not a contest in personalities. The only triumph in any case, whether it be civil or criminal, is whether or not the truth has triumphed. If it has, then justice has been done. If not, justice will not have been done. You are to determine the guilt or innocence of each defendant solely on the basis of the evidence and subject to the law as I have charged you.

From the charge of Judge Irving R. Kaufman sitting as a District Judge in United States v. Davis, 64 Cr. 388, at pp. 15a-16a of appellant's appendix. Decision aff'd. 353 F.2d 614 (2d Cir. 1965), cert. denied, 384 U.S. 953 (1966).

REQUEST NO. 21 (Cont'd) -2-

Sympathy; Oath as Jurors

The most important part of this case is the part which you now, as jurors, are about to play because it is for you and you alone to decide whether each defendant is guilty or not guilty of the crimes charged. I know you will try the issues that have been presented to you according to the oath which you have taken as jurors in which you promised that you would well and truly try the issues joined in this case and a true verdict render. And I suggest to you that if you follow that oath, and try the issues without combining your thinking with any emotions, you will arrive at a just verdict. It must be clear to you that once you get into an emotional state and let fear or prejudice or bias or sympathy interfere with your thinking, then you don't arrive at a true and just verdict.

Adapted from the charge of
Judge Thomas F. Murphy in
United States v. Umans, 65 Cr.
264, aff'd 368 F.2d 725
(2d Cir. 1966).

Sympathy; Oath as Jurors

The charges here, ladies and gentlemen, are most serious. The just determination of this case is important to the government and to the public. It is equally important to each of these defendants. Under your oath as jurors, you must decide the case without fear or favor and solely as I have stated in any number of times, in accordance with the evidence and the law.

If the government has failed to carry its burden as to the defendant, your sworn duty is to bring in a verdict of not guilty as to that defendant. If the government has carried its burden as to the defendant, you must not flinch from your sworn duty, but you must bring in a verdict of guilty as to that defendant.

From Judge Wyatt's charge in United States v. Zane (Trial Tr. 4127-28), aff'd 495 F.2d 683 (2d Cir. 1974).

EFB:sr
n-170

REQUEST NO. 22

P[illegible]ble Punishment

Now, under your oath as jurors you cannot allow a consideration of the punishment which may be inflected upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentences rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts until proven to your satisfaction.

From Judge Weinfeld's charge in
United States v. Bruswitz, aff'd,
219 F.2d 59, 62-3 (2d Cir. 1955)
cert. denied 349 U.S. 913.

EFB:sr
n-120

REQUEST NO. 23

Protection of the Public

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

From the charge in United States v. Witt, 215 F.2d 580, 584 (2d Cir. 1954), cert. denied, sub nom. Talanker v. United States, 348 U.S. 887.

This charge was also approved in United States v. Hiss, 185 F.2d 822, 833 (2d Cir. 1959), cert. denied, 340 U.S. 948.

EFB:sr
n-170

REQUEST NO. 24

The Government respectfully requests the Court marshal the evidence and include the following standard charges in its charge to the jury:

1. Verdict must be unanimous.

2. Right of the jury to examine the exhibits and have testimony read.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

EUGENE F. BANNIGAN,
ROBERT GOLD,
Assistant United States Attorneys,
Of Counsel.

EFB:ilf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

: 74 Cr. 1191 (EW)

-v-

JACK CHESTNUT, :

Defendant. :

----------x

GOVERNMENT'S SUPPLEMENTAL
REQUESTS FOR
CHARGE TO JURY

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

EUGENE F. BANNIGAN
ROBERT GOLD
Assistant United States Attorneys
of Counsel

FB:ilf

GOVERNMENT'S SUPPLEMENTAL REQUEST NO. 2

Presumption of Regularity of Mailing

This is a general rule that an official is presumed to have performed his official duties. Thus, in this case, it is presumed that a letter which has been properly addressed, sealed and mailed with postage paid reached the addressee in due course.

You, the jury need not grasp for improbable explanations; for instance that the postman casually lost or misdelivered the letters in question, but may make common sense inferences from the proven facts.

United States v. Owens, 420 F.2d 305 (2d Cir. 1970); United States v. Hynes, 256 F.2d 561, 564 (2d Cir. 1958). See generally IX Wigmore on Evidence §3437 (3d Ed. 1940); McCormack, Evidence 807 (2d Ed. 1972).

EFB:ilf

GOVERNMENT'S SUPPLEMENTAL REQUEST NO. 1

There has been testimony to the effect that certain acts of the defendant constituted crimes which violated sections 608 and 2 of Title 18 of the United States Code. Section 608 makes it a crime for anyone

> (a) [who] directly or indirectly, makes contributions in an aggregate amount in excess of $5000 during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective federal office...or to or on behalf of any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office ....

Section 2, as you will recall, holds that anyone who commits an offense against the United States, or aids, abets, counsels, commands, or induces its commission, or willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

EFB:ilf

GOVERNMENT'S SUPPLEMENTAL REQUEST NO. 1 (Con't) -2

Such testimony, if believed, may be used solely to infer that from the commission of these acts, similar in nature to the one charged in the indictment, the defendant did, indeed, intentionally, willingly and knowingly commit the crime with which he has been charged.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES -against- JACK L. CHESTNUT	74 Crim. 1191

DEFENDANT'S COMMENTS UPON

GOVERNMENT'S REQUEST TO CHARGE

REQUEST NO. 1: The defendant has no objection to this instruction, but in fact joins in the request.

REQUEST NO. 2: The defendant objects to this instruction and reaffirms Defendant's Requested Instruction No. 1, relying upon the authority cited for it. Government's Request No. 2 unfairly and improperly discourages the jury from finding doubt where it may legitimately exist.

REQUEST NO. 3: The defendant has no objection to this request.

REQUEST NO. 4: The defendant does not object to the reading of the statutary provisions here included, but emphatically reasserts its request that the definition of both "contribution" and "expenditure" from 18USC § 591 be read and the jury be required to determine whether the payments in question were "contributions" as an essential element of the offense, and that they be required to acquit if there is a reasonable doubt as to whether they were "contributions" instead of expenditures, U.S. v. Auto Workers, 352 U.S. 567 (1957); U.S. v. C.I.O., 335 U.S. 106 (1948); Defendant's Requested Instruction No. 22.

The defendant objects to the reading of 18 USC § 2(a) or any instruction upon aiding and abetting, since the indictment here is under 18 USC § 2(b), "causes", and thus proof of aiding and abetting is not sufficient to convict, and the request would confuse the jury and prejudice the defendant.

REQUEST NO. 5: The defendant objects to this request and reaffirms its request No. 20.

REQUEST NO. 6: The defendant objects to the second sentence as invading the province of the jury.

REQUEST NO. 7: The defendant most emphatically objects to this instruction as mis-stating the law under 18 USC § 591 where "gift" may be either a "contribution" or "expenditure", as invading the province of the jury and as virtually directing a verdict of guilty upon one essential element and upon a crucial question of fact.

REQUEST NO. 8: The defendant objects for the following reasons:

First: the indictment is in the conjunctive, not the disjunctive as the instruction a/ers, and the government must therefore prove both: accepting and receiving, and causing another to accept and receive.
Secondly: aiding and abetting (as noted above) is not charged in the indictment and should not be submitted.
Thirdly: the penultimate and last paragraphs mis-state and grossly understate the burden of proof as to causation by erroneously framing it in terms of aiding and abetting.

REQUEST NO. 9: The defendant has no objection to this request except its redundancy.

REQUEST NO. 10: The defendant has no objection to the first two pages of this request provided, of course, that proper instructions upon burden of proof are elsewhere given.
But the defendant objects to the penultimate and last paragraphs (page 3) as superfluous, as improperly giving the Court's imprimatur to the government's theory, and as improperly singling out certain elements of the evidence for emphasis.

REQUEST NO. 11: The defendant objects to this request as in conflict with and inconsistent with the definition of wilfulness, violates the presumption of innocence, shifts the burden of proof and invades the jury's role.

REQUEST NO. 12: The defendant objects to this instruction as mis-stating the evidence, invading the jury's province and impunging the defendant's credibility from the bench.

REQUEST NO. 13: The defendant objects for the same reasons set forth as to the previous request, and just as vehemently. The prosecution wants the Court to direct a verdict in its favor.

REQUEST NO. 14: The defendant objects as the grounds that there is no evidence of similar violations to suppor tthis charge, and for the reasons voiced in chambers against receipt of the allegedly similar conduct.

REQUEST NO. 15: The defendant has no particular objection to this request, which is essentially similar to Defendant's No. 3.

REQUEST NO. 16: The defendant has no objection to the first and second paragraphs. The illustration, however, is not a matter for instruction but for argument and the defendant urges the Court to leave the similes to counsel.
The last paragraph (page 2) of this request is objected to as confusing to the jury and unnecessary in view of other instruction.

REQUEST NO. 17: The defendant has no objection provided the following sentence (or words of similar effect) be added:
"Where two inferences may be drawn from evidence, one of guilt and one of innocence, you must, of course, choose the inference favorable to the defendant and give him the benefit of any doubt."

The defendant requests that the Court give the foregoing instruction whether or not the Government's Request No. 17 is given.

REQUEST NO. 18: The defense strenuously objects. The best learning is that the defendant's testimony should not be singled out for special comment and, while we do not have a law library available as these comments are composed, we shall be glad to furnish the Court with the

authority against this instruction before the jury is charged.

REQUEST NO. 19: The defense respectfully objects to this request to charge; the matter should be left to argument if it is properly supported by the evidence.

REQUEST NO. 20: The defense reaffirms its request No. 7 in lieu of the government's request.

REQUEST NO. 21: The defense objects to pages 1 and 2. Again the government is asking the Court to argue the case. This request does not explain a matter of law to the jury. We do not object to page 3.

REQUEST NO. 22: The defense has no objection to this request.

REQUEST NO. 23: The defense emphatically objects to this attempted injection of extraneous and improper considerations; although it may not be reversible per se in every case, it is, we submit, improper, unnecessary, inflammatory and highly prejudicial.

REQUEST NO. 24: The defendant objects to any request that the Court review or comment upon the evidence, which (though not forbidden in federal courts) is a practice tending to mar the jury system because of the great weight the jury naturally gives each word or inflection from the bench. The case is a brief one, the evidence uncomplicated, the factual issues for the jury relatively simple for the most part. We respectfully ask the Court to leave all discussion and review of and comment upon the evidence to counsel in argument and the jury in deliberation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JACK CHESTNUT

74 Cr. 1191 (EW)

GOVERNMENT'S OBJECTIONS TO
DEFENDANT'S REQUESTS TO CHARGE

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

Eugene F. Bannigan
Robert Gold
Assistant United States Attorneys
-Of Counsel-

REQUEST NO. 1

The Government objects to the requested charge that a reasonable doubt exists unless the defendant's guilt has been established to a moral certainty. The Government does not bear the burden of proving the defendant's guilt to a moral certainty.

REQUEST NO. 4

The Government objects to the word "should" on line 3, paragraph 1, and urges that the word "may" would be more appropriate.

Moreover, the Government is unable to comprehend the balance of the charge.

REQUEST NO. 5

The Government objects on the grounds that there are no witnesses or potential witnesses in this case who are "peculiarly within the power of . . . the prosecution." To the extent that such witnesses might be within the control of the defense, the Government has no objection to that portion of the charge which bears on uncalled defense witnesses.

The Government objects to paragraph 2 of the charge on the ground that it is repetitious.

REQUEST NO. 6

The Government objects absent some showing by the defense that evidence more satisfactory than that introduced is available to the Government.

REQUEST NO. 7

The Government has no specific objection to the language used in this request; however, it would prefer to rely on the Court's standard instruction on the credibility of witnesses.

REQUEST NO. 8

The Government objects to the language set forth in paragraph 2 as being contrary to the law in this Circuit.

REQUEST NO. 9

The Government objects on the ground that the requested charge is contrary to established law in this Circuit. See United States v. Rivera, Dkt. No. 74-2115 (2d Cir. March 13, 1975).

REQUEST NO. 17

The Government objects to the inclusion of a charge on the lesser included offense on the ground that the indictment charges that the defendant's violation was wilfull.

REQUEST NO. 19

The Government objects to any reference in the charge to the statute's prohibition with respect to "expenditures." This Court's decision denying the defendant's Rule 12 motion to dismiss the indictment clearly established that the violation charged was the receipt of an unlawful contribution. Any reference in the charge to the word "expenditure" would merely result in confusing the jury.

REQUEST NO. 20

The Government objects to the inclusion of essential element No. 2 on the ground that it seeks to re-inject an issue which this Court, as a matter of law, has already removed from the case.

The Government also objects to elements Nos. 3 and 4 on the ground that they are inartfull, and inaccurately states in the conjunctive instead of the disjunctive as set forth in the indictment.

The Government objects to element No. 5 on the ground that it misstates the applicable law by suggesting that the candidate at the time of the election already be an elected federal official.

Defendant is not entitled to a charge that venue must be established beyond a reasonable doubt. Venue, in the first instance, is an issue for the Court and need only be established by a preponderance of evidence.

In any event, the defendant has waived venue in this case by failing to question it prior to the time the jury was sworn.

REQUEST NO. 22

The Government objects on the grounds that the requested charge seeks to inject the issue of "expenditures" already decided by this Court.

REQUEST NO. 23

The Government objects to the requested charge absent proof that the defendant thought that the source of the contributions was TAPE.

REQUEST NO. 24

The Government objects on the ground that venue was been waived by the defendant.

REQUEST NO. 25

The Government objects on the grounds that the charge is argumentative.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

EUGENE F. BANNIGAN
ROBERT GOLD
Assistant United States Attorneys
-Of Counsel-

MOTION IN ARREST OF JUDGMENT

The defendant, Jack L. Chestnut, by his attorneys, respectfully moves the court to arrest the judgment for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States in that upon its face the payment it describes was an expenditure not a contribution and it was not forbidden to accept or receive an expenditure.

2. This court is without jurisdiction of the offense in that the offense if any was not committed in this District.

Respectfully submitted,

Douglas W. Thomson

Jack S. Nordby

THOMSON, WYLDE, NORDBY & FRIEDBERG
Suite 1530 - 55 East 5th Street
Saint Paul, Minnesota 55101
(612) 227-0856

John A. Cochrane

COCHRANE & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota 55101
(612) 224-7505

Attorneys for Defendant

Dated:

)

* * * * * * * * * * * *

MOTION FOR A JUDGMENT OF ACQUITTAL
OR FOR A NEW TRIAL

The defendant, Jack L. Chestnut, by his attorneys, respectfully moves the court to order a judgment of acquittal or to grant him a new trial for the following reasons:

1. The defendant's motion for acquittal made at the conclusion of the Government's evidence and at the conclusion of all the evidence should have been granted on the following grounds:

   a. The evidence failed to establish a willful violation.

   b. The evidence failed to prove venue in the Southern District of New York.

   c. The evidence failed to prove an unlawful contribution, as distinct from an expenditure.

2. The verdict is contrary to the weight of the evidence, for the reasons set forth in paragraphs 1a, 1b and 1c above.

3. The verdict is not supported by substantial evidence in the respects set forth in paragraphs 1a, 1b and 1c above.

4. The evidence regarding other payments by witness Bob A. Lilly to Mr. Chestnut should not have been received over defense objection and resulted in prejudice to the defendant in that the evidence did not convincingly show other similar criminal conduct admissible on the question of intent.

5. The evidence of the $5,000 retainer of Mr. Chestnut by AMPI was improperly presented and received.

6. The defendant was prejudiced by the following particulars of the instructions to the jury:

a. The instruction upon the credibility of the defendant as a witness.

b. The failure to instruct upon the legality under 18 U.S.C. §608 of the other payments by Bob A. Lilly.

c. The failure to instruct and allow the jury to decide the question of whether the payments to Lennen & Newell were an expenditure or a contribution as requested.

d. The failure to instruct as requested that proof of the defendant's acts in the Southern District of New York and not elsewhere was essential.

e. The failure to instruct as requested that evidence of other allegedly similar acts could be considered by the jury on the question of willfulness only if and after they found beyond a reasonable doubt that the defendant did the particular act charged in the indictment.

f. The instruction upon both the allegation that the defendant accepted and received, and caused Lennen & Newell to accept and receive the contribution.

g. The instruction that the unusual manner of the transaction permitted an inference of willfulness.

7. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances:

a. The court's refusal to allow defense counsel to discuss the applicable law in summation.

b. The prosecutor's question of defense witness Rolvaag suggesting other unlawful conduct on the part of the defendant.

c. The prosecutor's inflammatory question to the defendant insinuating he had personally taken money improperly from AMPI and the denial of a motion to strike or for a mistrial.

d. The trial of this matter in the Southern District of New York where it developed at trial that there was no evidence of the defendant's presence or any action by him in that District despite the allegations of the indictment to the contrary, nor did any other significant aspect of the alleged offense occur in this District.

e. The receipt in evidence of a copy of selected testimony by witness Miller before the grand jury which had already been made part of the record by reading aloud.

f. The court's comment to the jury that the only thing the defendant could remember was that he did not see the checks in question.

g. The ex post facto presentation to the grand jury of an amendment to 18 U.S.C. §610 enacted after the defendant's alleged conduct.

8. The operative statutes, 18 U.S.C. §§591 and 610, are unconstitutionally vague and overbroad and cannot be understood by persons of ordinary intelligence.

9. The same statutes because of their overbreadth and vagueness have a chilling effect upon Constitutional rights to free speech, assembly and petition for redress of grievances.

WHEREFORE the defendant, Jack L. Chestnut, prays the court enter its order for judgment of acquittal, or for a new trial, or for judgment of the lesser included offense of a non-willful violation.

Respectfully submitted,

Copy.

U.S. DISTRICT COURT
FILED
JUN 25 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

-against- : 74 Cr. 1191

JACK L. CHESTNUT, :

OPINION

Defendant. :

- x

J 42071

PAUL J. CURRAN, ESQ.
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York

Attorney for United States of America

EUGENE F. BANNIGAN, ESQ.
ROBERT GOLD, ESQ.
Assistant United States Attorneys
Of Counsel

THOMSON, WYLDE, NORDBY & FRIEDBERG, ESQS.
55 East 5th Street
Saint Paul, Minnesota

COCHRANE & BRESNAHAN, ESQS.
830 Minnesota Building
Saint Paul, Minnesota

Attorneys for Defendant

DOUGLAS W. THOMSON, ESQ.
JACK S. NORDBY, ESQ.
JOHN A. COCHRANE, ESQ.
Of Counsel

EDWARD WEINFELD, D. J.

The defendant, Jack L. Chestnut, the campaign manager for Senator Hubert H. Humphrey's 1970 campaign for the office of United States Senator from Minnesota, was convicted after a jury trial of willfully violating 18 U.S.C., sections 610 and 2. The charge was that the defendant caused Lennen & Newell, Inc., a New York advertising agency employed by the Humphrey campaign, to accept or receive an illegal contribution to the Humphrey campaign from Associated Milk Producers, Inc. ("AMPI"), a corporation.

The defendant now moves pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal upon various grounds, including that the evidence is insufficient to sustain the conviction, lack of venue in this district, errors in the admission of evidence, and prejudicial instructions to the jury. Other grounds advanced for the judgment of acquittal were previously argued in a pretrial motion for dismissal of the indictment. As to these, the court adheres to its previous rulings, the bases for which are fully explicated

(1)
in its opinion.

The first challenge to the guilty verdict is that the evidence failed to establish willfulness and consequently a verdict of not guilty is required as a matter of law. The current rule in this circuit is that upon a motion for a judgment of acquittal the trial judge must determine whether upon the evidence, giving full play to the jury's right to determine credibility, weigh the evidence and draw justifiable inferences of fact, a

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(1) United States v. Chestnut, ___ F. Supp. ___ (S.D.N.Y. 1975). The court held, inter alia, that the acts charged in the indictment constitute a "contribution" as that term was defined in the 1970 version of § 591 of Title 18 and thus the indictment stated an offense under §§ 610 and 2. The government's evidence at trial was consistent with the allegations of the indictment. There was no need to reopen the pretrial motion as to whether the indictment charged an offense under § 610, which only prohibits the receipt or acceptance of an illegal "contribution," not an "expenditure." Thus, contrary to defendant's claim, there was no occasion to instruct the jury on the distinction between a "contribution" and an "expenditure" as those terms were used in the 1970 version of §§ 591 and 610, any more than a court should charge the jury on a lesser included offense, duress or entrapment where the evidence does not warrant it. United States v. Marin, Dkt. No. 74-2606 (2d Cir. Apr. 15, 1975); United States v. Carroll, Dkt. Nos. 74-1138, -1139, -1197 (2d Cir. Jan. 6, 1975); United States v. Marcey, 440 F.2d 281, 285 n.20 (D.C. Cir. 1971). There was no evidence presented at the trial that raised a factual question as to whether or not the transfer of AMPI funds constituted a contribution. It is clear that AMPI made a contribution to the Humphrey campaign.

reasonable mind might fairly conclude guilt beyond a reasonable doubt.[2]

Considering the evidence in the view most favorable to the government on this motion, as the court must,[3] the court readily finds that "a reasonable mind might fairly conclude" that the defendant willfully violated section 610 beyond a reasonable doubt -- that the defendant knew he was causing another to accept or receive an illegal corporate contribution.[4]

Willfulness rarely can be established by direct

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(2) United States v. Taylor, 464 F.2d 240, 243 (2d Cir. 1972), overruling the prior "fair preponderance" test articulated by Judge Learned Hand in United States v. Feinberg, 140 F.2d 592, 594 (2d Cir.), cert. denied, 322 U.S. 726 (1944). See also United States v. DeGarces, Dkt. No. 75-1013 (2d Cir. June 13, 1975); United States v. Freeman, 498 F.2d 569, 571 (2d Cir. 1974); United States v. Carneglia, 468 F.2d 1084, 1087 (2d Cir.), cert. denied sub nom. Inzerillo v. United States, 410 U.S. 945 (1973).

(3) Glasser v. United States, 315 U.S. 60, 80 (1942); United States v. Freeman, 498 F.2d 569 (2d Cir. 1974); United States v. McCarthy, 473 F.2d 300 (2d Cir. 1972); United States v. D'Avanzo, 443 F.2d 1224, 1225 (2d Cir.), cert. denied, 404 U.S. 850 (1970); United States v. Kahaner, 317 F.2d 459 (2d Cir.), cert. denied, 375 U.S. 835 (1963).

(4) See United States v. Pipefitters Local Union, 434 F.2d 1116, 1124-25 (8th Cir. 1970), rev'd on other grounds, 407 U.S. 385, 400 n.11 (1972).

evidence; usually it is determined by circumstantial evidence, an overall consideration of all the facts and circumstances and the reasonable inferences to be drawn therefrom.

The hard thrust of the defense was that the defendant believed that the contribution came from a fund associated with AMPI, composed of voluntary donations from its members, which legally could make contributions to political campaigns.(5) However, the evidence established that the contribution came from AMPI's general corporate funds and that it was received in an indirect manner devised by the defendant. It was the defendant who directed both Lennen & Newell, Inc. and Bob Lilly, assistant to the general manager of AMPI, to carry out the procedures whereby the advertising agency, which had rendered services to the Humphrey campaign, not to AMPI, would prepare invoices to be made out to AMPI and for AMPI to pay those invoices. It was the defendant who instructed Lilly not to pay the initial invoices because they were not in proper form, but to await corrected bills. It was the defendant who sent a

(5) Pipefitters Local Union v. United States, 407 U.S. 385, 409 (1972).

letter to Lilly to have AMPI pay the enclosed four corrected invoices each in the sum of $3,000, instructing him to forward checks made payable to Lennen & Newell to him, the defendant, at his office in Minneapolis, Minnesota. Thereafter, Lilly, pursuant to these instructions, forwarded to the defendant in Minneapolis two $6,000 AMPI checks drawn on a corporate account and payable to Lennen & Newell, Inc. The checks were thereafter deposited by Lennen & Newell in its bank account in this city at Bankers Trust Company. The checks upon their face in two places in bold letters indicated they were corporate checks drawn on a corporate bank account.

The defendant contends that in the absence of direct evidence he saw or would in due course have seen the crucial checks, there was no basis upon which a reasonable mind might fairly conclude beyond a reasonable doubt that he knew that AMPI was using its general corporate funds and thus making an illegal corporate contribution, rather than using funds derived from AMPI's voluntary political affiliate, which could make a legal contribution to the campaign. The short answer to this contention is that the defendant's acts and conduct relating

to the contribution come within the classic statement by the Supreme Court of circumstances under which willfulness may be inferred, including the "handling of one's affairs to avoid making records usual in the transaction of the kind, and any conduct, the likely effect of which would be to mislead or to conceal."(6) Usually a contributor to a political campaign sends his contribution directly to the campaign committee and normally the committee makes direct payment to those to whom it is indebted. Here the defendant arranged with Lennen & Newell, Inc. for it to bill AMPI for services Lennen & Newell had rendered not to AMPI, but to the Humphrey campaign. As a result there was no documentation that AMPI had contributed $12,000 to the Humphrey campaign.

The defendant did not dispute that the two $6,000 AMPI corporate checks were received in his offices; however, he denied he saw the checks; he emphasizes the lack of direct evidence that he saw the checks after AMPI forwarded them to his office pursuant to his instructions. With the checks upon their face carrying their own indicia that they were drawn on a corporate account, his

(6) Spies v. United States, 317 U.S. 492, 499 (1943).

counsel recognize on this motion that this was a central matter on the issue of willfulness. Thus they state: "The question of fact in this case ultimately was whether Mr. Chestnut saw the AMPI checks. . . ."(7) Indeed, the court, in its instructions to the jury, suggested that a substantial question is: "Did the defendant ever see the AMPI checks of $6000 each . . .?"(8) The jury answered by its verdict. There is no reason to set it aside. The totality of evidence based upon the defendant's own acts, conduct and all the surrounding circumstances warranted the jurors in drawing the reasonable inference that defendant saw the checks with their corporate legend and that he acted willfully in causing Lennen & Newell to receive or accept this corporate contribution to the Humphrey campaign which he knew was unlawful.

The defendant next contends that the evidence failed to prove venue in the Southern District of New York. In addition, he argues that venue was improper in this district.

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(7) Defendant's Post Trial Memorandum p. 18.

(8) Trial Transcript 561.

There is no dispute that the AMPI checks were deposited by Lennen & Newell in its bank account in Manhattan and that, so far as the evidence indicates, the defendant was not then present in this district. The evidence does indicate that defendant's various acts in arranging for Lennen & Newell to bill AMPI for the advertising services and AMPI's payment with its corporate checks occurred in Minnesota. There is no proof of where the checks were physically delivered to Lennen & Newell, Inc. prior to their deposit in this district. Under these circumstances, was venue proper in this district?

The Sixth Amendment does not provide a defendant with a constitutional right to trial in his home district.(9) Rather, both the Sixth Amendment and Article III, section 2, of the Constitution provide that a defendant must be tried in the state and district where the crime was committed. Thus in determining proper venue, the court must determine the place of the crime(10) after an analysis of the nature

(9) Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240, 245 (1964); Johnston v. United States, 351 U.S. 215, 220-21 (1956).

(10) United States v. Cores, 356 U.S. 405, 407 (1958); United States v. Anderson, 328 U.S. 699 (1946).

of the alleged offense.[11]

The defendant was found guilty of violating the law making it illegal for any "person to accept or receive" political campaign contributions prohibited by that section.[12] The jury was instructed that under another provision of law, "[w]hoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."[13] The key words of the substantive statutory prohibition are "to accept or receive" an illegal contribution. The determination of the venue question requires the court to examine the statute "to ascertain when the defendant's actions have progressed to the point where a court can confidently conclude that a crime has been committed."[14]

Where a statute makes it illegal to receive

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(11) Travis v. United States, 364 U.S. 631 (1961).

(12) 18 U.S.C. § 610.

(13) 18 U.S.C. § 2(b).

(14) United States v. Bithoney, 472 F.2d 16, 23 (2d Cir.), cert. denied, 412 U.S. 938 (1973).

money under certain circumstances and the recipient is given a check, venue is proper where the check is deposited and the proceeds credited to the recipient's account. Thus in Burton v. United States,[15] the defendant was charged with violating a statute forbidding a United States Senator from receiving compensation for services rendered in relation to a proceeding in which the United States is an interested party. The Supreme Court held that venue was proper in the district where the checks were deposited and honored, not where the check was physically delivered to the Senator.[16] In Burton, the checks were deposited and credited to defendant in the same place where they were physically delivered to him, but as Judge Learned Hand later indicated, the Supreme Court's analysis makes clear that venue did not turn on where the checks were physically delivered.[17] In another prosecution under the same statute, although the defendant's services were performed and the checks

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(15) 196 U.S. 283 (1905).

(16) Id.

(17) United States v. Lotsch, 102 F.2d 35, 36 (2d Cir.), cert. denied, 307 U.S. 622 (1939). See also United States v. Johnson, 337 F.2d 180, 193 (4th Cir. 1964), aff'd, 383 U.S. 169 (1966).

were physically delivered to him in Washington, D.C., the court held that venue was proper in the District of Maryland, where the compensation was received, that is, where the checks were deposited and the defendant's account was credited.(18)

The government's theory of the case was that the defendant caused Lennen & Newell to accept or receive an illegal corporate campaign contribution to the Humphrey campaign. Following their receipt in Minnesota, the AMPI checks were turned over to Lennen & Newell and were deposited in its bank account in the Southern District of New York. The defendant had not caused another to commit the ultimate essential element of the crime until the checks were received or accepted by Lennen & Newell, Inc. in payment for services rendered by it to the Humphrey campaign. Not until the checks were so received or accepted upon their deposit and credited to the Lennen & Newell account in this district was the final element of the crime effected. Venue in this district was therefore proper.

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(18) United States v. Johnson, 337 F.2d 180, 193-95 (4th Cir. 1964), aff'd, 383 U.S. 169 (1966). See also United States v. McMaster, 343 F.2d 176, 181 (6th Cir.), cert. denied, 382 U.S. 818 (1965).

The defendant also argues that venue is improper in this district because all of his conduct in causing the acceptance or receipt was performed by him in Minnesota. The argument is without substance. "The constitutional requirement is as to the locality of the offense and not the personal presence of the offender."(19) For example, the general rule is that where the crime charged is a failure to do a legally required act, the place fixed for its performance, not the place where the defendant remained, fixes the situs of the crime.(20) An accessory may be tried in the district where the principal committed the crime even though the accessory never entered the district.(21) In prosecutions for making

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(19) Armour Packing Co. v. United States, 209 U.S. 56, 76 (1908). See also Travis v. United States, 364 U.S. 631, 634 (1961).

(20) Where a defendant was charged with failing to report for civilian work to a hospital in another district as ordered to by his draft board, which was in the district in which he resided, venue was proper only in the district where the hospital was located, not in the district of his residence where he remained throughout the relevant period. Johnston v. United States, 351 U.S. 215, 220-21 (1956). See also United States v. Dyson, 469 F.2d 735 (5th Cir. 1972); United States v. Clark, 468 F.2d 708 (3d Cir. 1972); United States v. Turner, 244 F.2d 404 (2d Cir.), cert. denied, 354 U.S. 926 (1957).

(21) United States v. Buckhanon, 505 F.2d 1079, 1083 (8th Cir. 1974); United States v. Kilpatrick, 458 F.2d 864 (7th Cir. 1972); United States v. Bozza, 365 F.2d 206, 220-21 (2d Cir. 1966); United States v. Gillette, 189 F.2d 449, 451-52 (2d Cir.), cert. denied, 342 U.S. 827 (1951).

false statements in a matter within the jurisdiction of a federal agency, venue is improper in the district where the affidavit was written and mailed, but lies instead where the affidavit is required to be filed (22) or where agency decision in reliance thereon takes place. (23)

The court does not understand the defendant to argue that merely upon the receipt of the checks in Minnesota or even upon his causing the checks to be delivered to Lennen & Newell, a crime was committed. Indeed, the defendant could have returned the checks to AMPI, or destroyed them, or never caused their delivery to the advertising agency, or even recalled them after Lennen & Newell had physically received them, in which event no crime would have been committed since the final element of the crime would have been lacking. The receipt or acceptance of the contribution occurred when the checks were deposited in New York in payment of a Humphrey campaign bill. The offense

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(22) Travis v. United States, 364 U.S. 631, 634 (1961); United States v. Lombardo, 241 U.S. 73 (1916).

(23) United States v. Candella, 487 F.2d 1223, 1228 (2d Cir. 1973), cert. denied, 415 U.S. 977 (1974). See also United States v. Bithoney, 472 F.2d 16, 24 (2d Cir.), cert. denied, 412 U.S. 938 (1973).

occurred in this district and venue was proper.(24) This disposition makes it unnecessary to consider the government's contention that in any event the defendant waived the venue issue by not moving at the appropriate time.

Other items raised by the defendant in support of his motion for a new trial require little discussion.

The defendant argues that proof of similar

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(24) Accordingly the court does not reach the question of whether under 18 U.S.C. § 3237(a) venue would also be proper in the District of Minnesota. The defendant argues that venue lies only in that district. Contrary to the defendant's contention, Judge Friendly's analysis in United States v. Bozza, 365 F.2d 206, 220 (2d Cir. 1966) suggests that the government may have had a more difficult problem had the prosecution been in the District of Minnesota. But see United States v. Taller, 394 F.2d 435, 437-38 (2d Cir.), cert. denied, 393 U.S. 839 (1968).

So, too, this disposition makes it unnecessary to consider whether, under 18 U.S.C. § 3237(a), when the tainted corporate contribution is made by check, the receipt of the contribution is a continuing offense which does not end until the proceeds of the check have been made fully available to the recipient and hence venue may be in more than one district if the check is deposited in one district and paid in another. See United States v. Johnson, 337 F.2d 180, 193-95 (4th Cir. 1964), aff'd, 383 U.S. 169 (1966).

acts was improperly admitted. Proof of similar acts on the defendant's part in accepting three other contributions from AMPI employee Bob Lilly was admitted solely as tending to show a pattern of conduct on the issues of knowledge and intent at the time of the events charged in the indictment.(25) Cautionary instructions were given to the jury as to the limited purpose for which this evidence was received,(26) first when offered and again in the final instructions.

The defendant further contends that the court's instruction on the credibility of the defendant as a witness was prejudicial. The instruction was proper and in accordance with authority in this circuit.(27)

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(25) See United States v. Campanile, Dkt. Nos. 74-2160, -2320 (2d Cir. Apr. 24, 1975); United States v. Gerry, Dkt. Nos. 74-2100, -2106 (2d Cir. Mar. 28, 1975); United States v. Papadakis, 510 F.2d 287, 294-95 (2d Cir. 1975); United States v. Miller, 478 F.2d 1315 (2d Cir.), cert. denied, 414 U.S. 851 (1973); United States v. Williams, 470 F.2d 915, 917 (2d Cir. 1972); United States v. Johnson, 382 F.2d 280, 281 (2d Cir. 1970).

(26) T. 556-57. See United States v. Papadakis, 510 F.2d 287, 295 (2d Cir. 1975); United States v. Klein, 340 F.2d 547, 548-49 (2d Cir.), cert. denied, 382 U.S. 850 (1965).

(27) United States v. Dozier, Dkt. No. 74-2594 (2d Cir. June 10, 1975); United States v. Tyers, 487 F.2d 828 (2d Cir. 1973); United States v. Mahler, 363 F.2d 673 (2d Cir.

The court has considered the other items raised by the defendant and finds them without merit.

A careful review of the record convinces the court that the jury's verdict is supported by substantial evidence and that the defendant received a fundamentally fair trial.

The motions for a judgment of acquittal, new trial and arrest of judgment are denied in all respects.

Dated: New York, N. Y.
June 25, 1975

EDWARD WEINFELD
United States District Judge

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footnote 27 cont'd

1966); United States v. Sullivan, 329 F.2d 755 (2d Cir.), cert. denied, 377 U.S. 1005 (1964). See also Reagan v. United States, 157 U.S. 301, 304-11 (1895); United States v. Hill, 470 F.2d 361 (D.C. Cir. 1972). The language used by the court was recently reviewed and approved by our Court of Appeals in United States v. Sclafani, 487 F.2d 245 (2d Cir.), cert. denied, 414 U.S. 1023 (1973).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JACK L. CHESTNUT,

Defendant.

74 Cr. 1191

New York, New York
June 26, 1975
10:00 a.m.

Before:

HON. EDWARD WEINFELD,

District Judge

APPEARANCES:

EUGENE F. BANNIGAN, Esq.
For the Government

JACK S. NORDBY, Esq.
55 East 5th Street
St. Paul, Minnesota
For the Defendant

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

THE CLERK: For sentence, United States of America versus Jack L. Chestnut.

Is the Government ready?

MR. BANNIGAN: The Government is ready.

THE CLERK: Defendant ready?

MR. NORDBY: Defendant ready.

THE COURT: Are you aware of the fact that I denied your motion for a new trial?

MR. NORDBY: I am, your Honor. I saw the order late yesterday afternoon and read the opinion.

THE COURT: All right, you may proceed.

MR. NORDBY: Your Honor, much is at stake in criminal cases, more so than in other matters.

I am a criminal defense lawyer, and so I assume that responsibility, but at the sentencing stage I feel particularly inadequate. All the pretentions, perhaps, that go with the trial, and even the joy of the contest are gone at this point, and I never felt more inadequate than I do in this case.

Your Honor, it is an honor and a privilege for me to be here in Mr. Chestnut's behalf. It is an honor and privilege to practice in this court.

I have tried to present this case in a professional, lawyer-like way. We lost. We accept that, although no

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

loss has ever touched me and certainly as deeply. Having lost on the evidence and on the law, it is all the more difficult to look for the confidence to say something at this most difficult and important stage that would be appropriate -- and here I appear in behalf of a better lawyer than I -- probably a better man. Certainly your Honor has heard many more accomplished, prominent, experienced, sophisticated, eloquent lawyers than I, but I think I can say that your Honor has never heard a lawyer who wished more for the ability to be able to assist a client in this case, who believed more in his client's cause.

Last night in the hotel room I read for the first time a number of letters that I understand have been submitted to your Honor in consideration of sentencing, and that in itself to me was a humbling experience -- from senators, law enforcement people, fellow lawyers, judges, prosecutors, friends and clients -- and I hope someday if I am in need to be able to call upon something approaching that kind of testimonial to my competency and integrity, generosity an. qualities that most of us strive for and, hopefully that we have, and hope that it is with us.

I do not know what I can add, your Honor. Perhaps I can remind you, although I expect it is obvious, the agony that Mr. Chestnut and his family have undergone in the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

course of this prosecution.

Perhaps I can emphasize the exemplary nature of the life that he has led, his professional life, his family life, his life in politics which he has set forth in the letter to you, in connection with the matter that was on trial here.

It may be appropriate to mention the widespread publicity there has been, particularly, I think, in Minnesota, and the lesson that I think has been impressed upon the public, particularly upon people in public office by this matter. In fact, the events of the last two years I think have had a cleansing effect -- I hope they have, but I find it profoundly saddening to find Mr. Chestnut in this long, astonishing episode. But that is irrevocable. I can only ask you now, your Honor, not to inflict any further deeper wound on the man and his family. I ask you to see if you can find, if there has been enough punishment and retribution at this time, by virtue of what has already occurred, and will continue to be a lingering, recurring retribution and punishment - I ask your Honor respectfully and as forcefully as I can to stay the imposition of any sentence under 18 U.S.C. 3651, to suspend the execution of any sentence that may be imposed on Mr. Chestnut so that he can go back to his family and apply his talents to his

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

profession and the other good things that he has devoted himself to, so that he can try to put back together the pieces damaged by it. I believe, your Honor, that he is a deserving man.

Thank you.

THE COURT: Jack Chestnut, do you want to make any statement in your own behalf or set forth any reason why judgment of the Court should not be imposed upon you?

THE DEFENDANT: Yes, I do, your Honor. I have filed a rather lengthy narrative statement --

THE COURT: I have read your statement. I have read it more than once.

THE DEFENDANT: I do not wish to repeat all of that, just maybe to add or emphasize a few brief questions.

I became involved in politics some 15 years ago, not because I had any political aspirations of my own, because I have never had any and do not at the present time, but because out of respect for a particular individual who over 15 years grew greatly, not only respect but admiration for his brilliance and his work for the Government, and it is respect that I still hold for Senator Humphrey.

I have been convicted by the jury, and I do not quarrel with that. I still do believe personally in my innocence in that I did not willfully cause contributions to be made. However, I was convicted, I understand that.

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The illegal contribution was made. I should have been more diligent, more careful, more cautious, more suspicious, but I was not. So that I apologize to this Court. I apologize to Senator Humphrey, and I apologize to the citizens of the State of Minnesota.

I particularly apologize to my wife, my family, my professional associates who stood by me through this ordeal, and honor and respect which turned to dishonor and disrepute.

I must stand before you this morning convicted, and all that I can ask is that you consider the nature of what I have been convicted of, and temper that somehow with whatever justification there might be with my past conduct, professionally, in the community, and with my family.

I thank you for that consideration.

THE COURT: It has often been said, and it is true, that the most difficult judgment a Court is required to make is in the matter of sentence.

This is particularly so in the instant case.

This Court has spent many soul-searching and agonizing hours in reaching its judgment as to a fair and just sentence in this case.

Such a sentence must take into account the interests of the defendant, his family and his future.

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The interests of the community also must be considered.

Thus, in evaluating what is a fair and just sentence, four dominant factors come into play:

(1) the rehabilitation of the defendant;

(2) enforcement of the laws;

(3) the deterrent impact of a sentence upon the defendant;

(4) the deterrent impact upon others who may be minded to commit similar offenses.

There is no purpose to exact retribution.

The Court has had the benefit of a thorough and complete presentence report, with details of the defendant's entire life and family, and those of his professional and public life and activities.

In addition, the Court has received scores of letters on behalf of the defendant.

These included the defendant's own biographical history, together with his explanation of the events which led to his conviction, and a letter from his wife.

Other letters are from many persons holding high public office, including United States senators, governors, a Federal judge, State judges, United States Attorney, State prosecutors, State Attorney Generals, State legislators,

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defendant's law partner, associates, friends and grateful clients.

This Court has always welcomed such letters because they come from those who really know a defendant and give a full and rounded picture of him in the various phases of his life. It is not only to the credit of the defendant, but to his friends as well that in this sad hour in his life they stand at his side and speak a good word for him.

Their faith in him and the defendant's past good record makes it clear that to effect rehabilitation upon him confinement is not required; his ordeal in this matter has served that purpose.

So, too, as far as any deterrent force upon the defendant is concerned, the very experience of arrest, prosecution, trial and conviction give assurance that defendant never again will violate the law.

The need to protect society against future acts of the defendant do not call for confinement, because there is complete assurance that the defendant will never run afoul of the law again.

There remains, however, the factors of public interest, the enforcement of the criminal laws and the possible deterrent force of a sentence upon others who may be minded to commit the crime of which the defendant was

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convicted.

Here the defendant insists that his actions with respect to the illegal contribution which led to his conviction were not willful -- in fact, he has stated and reiterated his innocence in his statement to the Court.

His many friends who have written to the Court assert that the defendant's exemplary life negates the jury's verdict; others, who played a role in the Humphrey campaign which defendant directed, say they cannot reconcile the verdict with his ethical conduct while he was in charge of that campaign; others say that it is inconceivable that he should knowingly have participated in any effort to receive illegal corporate funds for allowable political contributions; that it all was a matter of confusion.

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However, the jury, upon substantial evidence, found otherwise; twelve impartial jurors decided that the defendant acted willfully and knowingly in causing the receipt of the tainted contribution.

Indeed, there was a solid basis for their decision.

As I stated in denying the motion for a new trial, it was the defendant who conceived and executed the plan whereby Lennen & Newell, the advertising agency, billed AMPI to whom the agency had rendered no services.

It was the defendant who effectively directed the payment from AMPI to Lennen & Newell.

Despite the defendant's persistence that he did not willfully violate the law, and his claim that he believed that the funds came from AMPI's political arm, which could make a legal contribution, there has been no adequate explanation of why, if that was so, the devious and circuitous method was employed whereby AMPI made the payment to Lennen & Newell instead of making it directly to the Humphrey campaign committee, so that the committee would pay Lennen & Newell in the ordinary course of events.

Thus, we must consider the nature of the crime, the public interest in the enforcement of the laws and the deterrent effect of a sentence upon others.

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The purpose of the law that was violated must be considered.

Its essential purpose is to insure the integrity of our political process; to prevent the corroding affect of aggregated wealth in the electorial process, whether the contributions came from management or labor.

Congress sought to stem the undue, if not the corrupting, influence upon politics by aggregated capital, whatever the source.

The law is vital to a democratic society, for it seeks to assure the public that those who aspire to, and achieve public office will not be beholden to any special interest group, and that elected representatives will truly and fairly represent their constituencies, and to eliminate deleterious influence resulting from the use of money.

Unfortunately, the high purpose of this law has been disregarded, and more often than not, honored more in breach than observance by many who hold high positions in public and corporate life.

Recent events have unearthed instance upon instance of violations of this statute.

The evidence in this case indicates that AMPI made illegal contributions to both major political parties

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and their candidates for purposes of self-interest and contrary to the public intent.

It is clear that AMPI sought to put both parties under its obligation and to demand special consideration from them or to influence executive or legislative action.

Considering the beneficent purposes of the law, the nature of the offense, the blatant disregard of the law, the deterrent force of a sentence is of significance.

We have witnessed an era, hopefully now in the past, where many in high office have felt themselves above and beyond the law. Their conduct has undermined the faith of many in our laws and system of justice.

The law which the defendant violated is, as I have already noted, important to assure the integrity of the political process.

It must be enforced to achieve that objective.

A civilized society is strong only as long as its laws are respected by all its members, no matter what their rank or station in life.

It can survive only as long as its laws are enforced fairly and impartially, no matter who the offender may be.

Merely to impose a fine would hardly be adequate to serve notice of the importance of this law to our society

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and that its enforcement is essential to the integrity of the political process.

In this circumstance, to assure that others will understand the seriousness of any violation and that others will be deterred from similar conduct, the court, giving full consideration to all factors which favor the defendant, is persuaded that the public interest in the enforcement of the law outweighs those personal factors.

Accordingly, the Court imposes a sentence of four months and imposes a fine of $5,000.

Now Jack L. Chestnut, it is my duty to inform you that with respect to the judgment that is about to be entered -- and I am sure you have this knowledge -- that you have a right to appeal, and if an appeal is to be taken it must be done within 10 days.

If you are without funds to prosecute an appeal, on proper application to this Court this Court will assign counsel to represent you.

I take it you are fully aware of your rights, and the Court is aware of the fact that there is no need for the Court to appoint counsel for you.

Do you understand your rights in that respect?

THE DEFENDANT: Yes, sir.

THECOURT: I will entertain any application for

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a stay, if counsel desires to make it.

MR. NORDBY: May I request, your Honor, that the Court stay execution of the sentence pending an appeal for 10 days, until a notice is filed, and that time will be appropriate to apply for a continuation of the pretrial release, or shall I apply for that now.

THE COURT: Please present it now.

MR. NORDBY: I request that Mr. Chestnut be released on the terms of his present release -- I don't recall precisely what they are -- pending a resolution of this matter.

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THE COURT: He is released on his own recognizance I take it there is no objection to continuance of that?

MR. BANNIGAN: No objection.

THE COURT: I will grant the application for a stay pending appeal. He will be continued to be released on his own recognizance, but the only condition, I impose is that the appeal be expedited.

I understand that you have a copy of the Minutes of this case, so that it ought not to take too long to prepare the appendix on appeal and the briefs.

What do you think a reasonable time would be?

MR. NORDBY: I do not know, your Honor.

THE COURT: I think you have presented every basis for attacking the indictment, and for attacking the verdict, and I do not think it should take long for you to prosecute the appeal. It should be an expedited appeal.

MR. NORDBY: I find it difficult to answer that, your Honor, because I have not had experience in this Circuit with regard to the time that it takes to process cases, but I certainly would like to have 45 days to file our brief.

THE COURT: Well, you have the record, as I say --

MR. NORDBY: We do. It does have some errors and

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omissions, your Honor, some of which I discovered recently.

THE COURT: Why don't we do it this way: I think 30 days is reasonable, so that if you have any problem you can go to the Court of Appeals. File your brief in 30 days, and the Government will file its brief within 30 days thereafter.

MR. NORDBY: Is that from today's date, your Honor, or the date of the notice?

THE COURT: From today's date.

MR. BANNIGAN: Your Honor, there is one matter -- the fine, is that committed or uncommitted?

THE COURT: I just said it is a committed fine.

MR. BANNIGAN: There is one other matter, your Honor, which has nothing to do with the sentence. You will recall that during the trial a number of checks, Lilly checks, were introduced in evidence, along with some loan agreements relating to those checks.

I would ask if counsel is willing, on the record, to permit the Government to substitute copies for the appeal, so that the original checks may be forwarded to the District Court in Texas where a trial is beginning tomorrow and may be needed in that trial.

THE COURT: Any objection?

MR. NORDBY: I don't know that I do, your Honor,

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except without reviewing the specific checks in question, it is difficult for me to reply immediately.

I do not know whether the originals may be of any decided use to the Court of Appeals.

So far as I know I see no objection to that, and I expect the Court of Appeals to get the originals, if they desire.

MR. BANNIGAN: If counsel can come to my office I will show them the checks.

THE COURT: Why don't you work that out, and if there is any problem you can come back to me.

MR. BANNIGAN: I assume if there is none we will send them off today.

Is that agreeable, Mr. Nordby?

MR. NORDBY: That is agreeable.

MR. BANNIGAN: Thank you.

MR. NORDBY: Your Honor, is the execution of the fine also stayed pending appeal?

THE COURT: Well, you may request it.

Would you rather defer payment of the fine? I have no objection.

MR. NORDBY: It doesn't make a great deal of difference to us, but I think Mr. Bannigan asked if it was committed.

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I would request that it also be stayed pending appeal.

MR. BANNIGAN: No objection.

It is stayed.

- - -

ed States of America vs.

United States District Court for SOUTHERN DISTRICT OF NEW YORK

FENDANT: JACK L. CHESTNUT

DOCKET NO.: 74 CRIM 1191 (EN)

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH	DAY	YEAR
JUNE	26	1975

In the presence of the attorney for the government the defendant appeared in person on this date

COUNSEL

___ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL JACK S. HORDBY, ESQ.
(Name of counsel)

PLEA

___ GUILTY, and the court being satisfied that there is a factual basis for the plea, ___ NOLO CONTENDERE, XX NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~/verdict of
___ NOT GUILTY. Defendant is discharged
XX GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, willfully and knowingly did cause Lennen & Newell, Inc. an advertising firm providing services to the Hubert H. Humphrey campaign, to accept and receive a corporate contribution.
(Title 18, United States Code, sections 610 and 2)

As charged

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR(4) MONTHS

-AND-

Defendant FINED $5,000,00, Fine to be paid or defendant to stand committed until the fine is paid or be is otherwise discharged according to law.

Defendant continued Released on Own Recognizance pending Appeal, on condition that the Appeal is filed expeditiously. Defendant's Briefs and Record to be filed within THIRTY (30) DAYS; Governments Brief due THIRTY (30) DAYS thereafter.
Payment of FINE is stayed pending Appeal.

SPECIAL CONDITIONS OF PROBATION

ONLY COPY AVAILABLE

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ADDITIONAL CONDITIONS OF PROBATION

It is ordered that the special conditions of probation imposed hereinabove, if any, and the general conditions of probation set out on the reverse side of this judgment are imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

UNITED STATES DISTRICT COURT

United States of America

Docket Number 74 Cr. 1191

-against-

Hon. Edward Weinfeld
(District Court Judge)

Jack L. Chestnut

NOTICE OF APPEAL

Notice is hereby given that Jack L. Chestnut appeals to the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other (specify) _____ entered in this action on June 26, 1975 (Date).

(Counsel for Appellant)

Address

Douglas W. Thomson
Suite 1530
55 East 5th Street
Saint Paul, Minnesota 55101

Date 7-1-75

To:

Clerk, United States District Ct.
Southern District of New York
United States Courthouse
Foley Square
New York, New York

Phone Number (612) 227-0856

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE

☐ I am ordering a transcript
☒ I am not ordering a transcript
Reason:
☒ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE July 1, 1975

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.

Date _____ Signature _____
(Court Reporter)

COPY FOR DEFENDANT

STATE OF MINNESOTA

COUNTY OF RAMSEY

JACK S. NORDBY, OF THE CITY OF ST. PAUL, COUNTY OF RAMSEY IN THE STATE OF MINNESOTA, BEING DULY SWORN, SAYS THAT ON THE 26th DAY OF AUGUST, 1975, HE SERVED TWO COPIES OF APPELLANT'S BRIEF AND ONE COPY OF THE APPENDIX IN THE CASE OF UNITED STATES V. CHESTNUT, DOCKET NO. 75-1268 UPON PAUL J. CURRAN, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, BY MAILING TO HIM SAID COPIES, POSTAGE PREPAID AT MINNEAPOLIS, MINNESOTA, AND BY DEPOSITING SAME IN THE POST OFFICE AT MINNEAPOLIS, MINNESOTA, DIRECTED TO SAID ATTORNEY AT 1 ST. ANDREW'S PLAZA, NEW YORK, NEW YORK, 10007.

JACK S. NORDBY

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 26th DAY OF AUGUST, 1975.

Marilyn Robertson

MARILYN ROBERTSON
NOTARY PUBLIC - MINNESOTA
Dakota COUNTY
My Comm Expires April 25 1979